is true that Judge STORY, in another part of his charge, states the rule as to the responsibility of one for the acts of others, done in the prosecution of a common, unlawful design, in almost the same words as are used in *State* v. *Shelledy*, [8 Iowa, 477,] * * * but he adds: 'More especially will the death be murder if it happens in the execution of an unlawful design, which, if not a felony, is of so desperate a character that it must ordinarily be attended with great hazard to life, and, *a fortiori*, if death be one of the events within the obvious expectation of the conspirators.'"

Now, reading from the same author, 486, note, in the case of *Ruloff* v. *People*, 45 N. Y. 213, a case tried before the courts in New York, and finally appealed to the supreme court of New York; and the supreme court, in passing upon the question, said:

"If the homicide was committed by one of several persons in the prosecution of an unlawful purpose or common design, in which the combining parties had united, and for the effecting whereof they had assembled, all were liable to answer criminally for the act; and if the homicide was murder, all were guilty of murder, assuming that it was within the common purpose." "The evidence showed that the blow which caused the death was inflicted by one of three burglars while in the act of robbing the store; it was uncertain whether the accused actually inflicted the blow, and thus the question was raised as to his responsibility for such an act committed by one of his confederates. There was evidence from which to infer a purpose on the part of the burglars of resisting to the death any one who should oppose them, and the charge of the judge that such such an illegal purpose must have been formed before the actual commission of the offense, although not necessarily at the time when the parties went out with the common purpose of larceny, is held by the court to be a correct statement of the law."

Here is a case that was passed upon years ago by the supreme court of Illinois, in which a number of parties had burglarized a house in Chicago, stolen a lot of goods, and some of the parties—whether they had been in the burglary or not they were not able to say—but some of the parties took these goods and were starting towards a fence-house with them,—they call it in the city a "fence-house," a place where they receive stolen goods,—and while standing in front of that house unloading the goods they were interrupted by a policeman, that some one of them shot. The court, in that case, said it was not the act of all, because the fact of unloading these goods there at that place was not an act which naturally or reasonably or probably in its execution would jeopardize human life; but if it had been an act that did put human life in danger, then the principles of law that I have given you would have been applicable; and here is what the court declares the law to be:

"The principle which underlies and controls cases of this character is the elementary and very familiar doctrine, applicable alike to crimes and mere civil injuries, that every person must be presumed to intend and is accordingly held responsible for the probable consequences of his own acts or conduct. When, therefore, one enters into an agreement with others to do an unlawful act, he impliedly assents to the use of such means by his co-conspirators as are necessary, ordinary, or usual in the accomplishment of an act of that character. But beyond this his implied liability cannot be extended. So, if the unlawful act agreed to be done is dangerous or homicidal in its character, or if its accomplishment will necessarily or probably require the use of force or violence, which may result in the taking of life unlawfully,

every party to such an agreement will be held criminally liable for whatever any of his co-conspirators may do in furtherance of the common design, whether he is present or not." *Lamb* v. *People*, 2 Crim. L. Mag. 472.

Now, you pass upon the question as to whether or not the purpose to rob is a crime that is committed by force and violence, and when attempted the exercise of force and violence is necessary to consummate it. That is one of the very ingredients of that crime. Then, is it an act of that character which may result in the taking of life unlawfully, or which would be dangerous to life? If so, it would be homicidal in its character. Or would the accomplishment of that crime necessarily require the use of force, and that force so used as to jeopardize human life? If so, it is the doing of an act that puts human life in danger, and which puts it in danger as a natural or probable or reasonable consequence of the act agreed to be done. And I repeat again that if the evidence shows in this case that there was a purpose entered into by these two defendants, together with Davis, to enter upon the crime of robbery upon Dansby, or any of these parties at that place,—I say any of them because Dansby had a right to defend the others, or the others had a right to defend him as against a crime of that character,—if they had agreed to enter upon a crime of that kind, and had gone to the place where the attempt was made to commit it, and were in the act of committing it, and in the course of the commission of that act some one of the party fired the shot which took the life of Dansby, that shot was the shot of all; and in such a case as that, if the evidence shows that state of facts, you have that which shows premeditation, you have that which shows deliberation, you have that which shows a purpose that was conceived and matured beforehand, to do an act which was naturally and probably dangerous and deadly in its character, to take the property of these men, or of a man, from his presence or from his person, by the exercise of violence. That is the crime of robbery. Now, the converse of that proposition I have given you as recognized by the supreme court of Illinois, and is justly recognized where the unlawful act agreed to be done is not of a dangerous or homicidal character, and its accomplishment does not necessarily or probably require the use of force or violence which may result in the taking of human life unlawfully. No such criminal liability will attach merely from the fact of having been a party to such an agreement. That would repudiate the doctrine enunciated in the old English case, where a party went out to steal chickens, because the stealing of a chicken is not a thing that necessarily or naturally or probably, from the way it is executed, would jeopardize a human life. But if it is a demand made upon a person for his money, whether that demand is made in words, or made by an act of violence, or attempted violence, that presents a state of case where the crime attempted is very different, because in the first case named (of the stealing of the fowl) the killing would be collateral to the purpose to steal, and in the case of robbery the killing is an act that naturally and reasonably and probably springs out of the purpose to rob, and all who agree to enter upon that robbery, and who are present at the place where it is being committed, or at-

tempted to be committed, while the parties are in the act of committing it, they are aiding, and assisting and counseling and abetting in its commission, and are responsible for the crime growing out of that robbery which may result in the taking of human life. And I repeat that the fact that the robbery is being committed, and if a human life is taken in the commission of it, shows deliberation, shows premeditation, shows that state of case that exhibits that it was thought of beforehand, so as to bring into existence malice aforethought. That doctrine has been recognized, when it comes to statutory crimes, by all the states, where they say by their respective statutes that he who kills in an attempt to rob, to commit arson, to commit rape, or burglary, or any of these high crimes, is guilty of murder; that whenever the proof shows that fact they but show a state of case that under the law that is administered here is a state of case which evidences deliberation, premeditation, and shows the existence of malice aforethought, and consequently the existence of murder. Now, that is the principle that has been invoked upon the part of the government. You are to take it; you are to find out what the truth of the case is, and to apply it to that truth that fits it. If it does not because that is not the truth of the case, that state of case is not made by the evidence; the principle becomes inapplicable. The other principle invoked is that these parties were attempting to arrest these defendants for the sake of a reward. Now, there is a right in the hands of the citizen to make an arrest of another citizen; but before that right can be executed certain conditions must be proven to exist. In the first place, it must be proven that the parties sought to be arrested were guilty of a crime, such as robbery. If the proof shows that prior to that time these two defendants, together with the other party, had been over here and robbed Rigsby, (this man who testified here, this witness who was here,) that the crime of robbery had been committed, that a crime had been committed such as would give a private citizen the right to arrest the party who had committed it, that is the first proposition that must be proven to exist by the testimony before a private citizen can make an arrest even for a high crime,—that a crime such as he seeks to make the arrest for had been committed by some one. That must be shown as a proposition that is true. Then, that he who is seeking to make the arrest must have reasonable ground to believe that the person he is seeking to arrest was the party who committed that crime. First, a crime must be shown to have been committed. Then it must be proven that the parties who sought to make the arrest had reasonable ground to believe that the parties they were seeking to arrest were the ones that committed that crime. If that set of facts is proven, any private citizen has a right to make the arrest. That is the law, and it is the law that puts a power in the hands of the citizen for the protection of himself and other citizens.

First, a crime must be proven. Then the party seeking to make the arrest must have reasonable ground to believe that the person he is seeking to arrest is the party who is guilty of that crime. If so, he can proceed to make the arrest. Now, a word as to the manner in which that power shall be executed. The law defines the manner

that power shall be exercised as clearly as is possible to be done, both by officers and citizens. When a citizen seeks to make an arrest, and the proof shows a crime has been committed, and the reasonable ground to believe that the party he is seeking to arrest is the one guilty of it, if it is possible to do so with due regard to his own safety, he is required to make himself known and his mission known, but he has a right, just as the officer has, to stand upon the principle that he is to seek his own safety and his own protection, and if, when he is seeking to make the arrest or proceeding to do so, the opportunity to make his mission known is cut off by a deed of actual or threatened violence upon the part of the person he is seeking to arrest, then the fact that he does not make known who he is and what his mission is before the party who cuts him off from the privilege or opportunity of making known his purpose, and who he is, does not deprive him of the right, if he is lawfully proceeding upon that mission, to stand upon the defensive and seek his own protection all the time. If he is fired upon, or an attempt made to fire on him, when he has that purpose in view, before he is enabled to make the purpose known, he is thereby cut off from proclaiming his object by an act of violence or threatened violence, and he can stand upon the defensive because he is in the right, he is in the execution of a lawful power; and he who so acts violently, or by such attempted violence, is to blame. When he is seeking to execute that power in that way under the facts I have enunciated, which give him the right to execute the power, those who resist are in the wrong, and if they kill those who are seeking to arrest them, or any one of them, they are guilty of the crime of murder, if the party seeking to make the arrest is proceeding in the way I have named, which is recognized by law as a legal and proper method of seeking to make an arrest. Now, that is the principle bearing upon that doctrine of the law that has been invoked in this case. You are to see whether that is the state of case that exists here. If so, you are to make the application of the principles of law to that state of case if it is proven. Now, again. There are two parties charged with this crime. It is necessary, therefore, that I should briefly give you the principles of the law showing how more than one person may commit a crime. I have already given to you a state of case which shows how more than one person may commit it. When they have agreed to enter upon the commission of a crime which necessarily or probably endangers human life in its commission, whenever they agree to enter upon it, and do enter upon the commission of a crime of that kind, and are present at the place in the execution of the purpose of robbery, they are all present aiding and abetting in the act of killing. The law says that those who participate, those who with their own hands, or with his own hand, does an act which is a crime, that he is responsible for this act. It says further all those who are present at that place, and are participating in that which produces the result, whether the primary purpose was to bring about that result, or the primary object was to do something else which would naturally produce such a result, are responsible. All persons who are present at the

time of the commission of a crime are principals, although only one committed the act, provided all are proven to have confederated and engaged in a common design of which the perpetration of the crime is a part. I will read from 6 Crim. L. Mag. page 351, note:

"All persons who are present at the time of the commission of a crime are principals, although only one committed the act, provided all are proven to have confederated and engaged in a common design of which the perpetration of the crime is a part. This doctrine of criminal combination is firmly established in our criminal jurisprudence, and the cases furnish numerous illustrations. All are held responsible, because the will of each individual contributed to it; each intended that the crime should be perpetrated. Thus, in *Green* v. *State*, [13 Mo. 383,] two confederated to commit a murder. Only one did the killing. The other being present, he was held equally guilty. What, in the sense of the law, is meant by being present, aiding and abetting, is thus stated in Foster's Crown Law. That when the law requires the presence of the accomplice at the perpetration of the fact in order to render him a principal it does not require a strict, actual, immediate presence, such a presence as would make him an eye or ear witness of what passeth. Several persons set out together, or in small parties, upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each taketh the part assigned him; some to commit the fact, others to watch at proper distances and stations to prevent a surprise or to favor, if need be, the escape of those who are more immediately engaged. They are all, provided the fact be committed, in the eye of the law, present at it; for it was made a common cause with them, each man operating in his station at one and the same instant, towards the same common end, and the part each man took tended to give countenance, encouragement, and protection to the whole gang, and to insure the success of their common enterprise."

So that all those who are present at the place where the killing transpired, either in the execution of a direct purpose to kill, or in the execution of a purpose to rob, out of the attempt to execute which purpose grows a killing, then they are all present, provided they are there in pursuance of a previous understanding to engage either directly or immediately in the killing or in the act of robbing. Now, that, of course, implies a previous agreement entered into beforehand. That, as I have told you, is called a "conspiracy," an agreement either expressly or tacitly entered into to commit an unlawful act, in this case to commit the crime of robbery. That, of course, can only be proven as a rule by circumstances, because when it exists it is something that is confined to those who enter into it. They do not proclaim their purpose upon the house tops, they do not call in a number of jurymen to witness the act that they may pass upon it; they do not make it known to anybody outside of the confederates,—and the only way you can ascertain the existence of a wicked undertaking or agreement such as is named a "conspiracy" by the law, is to drag it to the light of day by circumstances. The association of the parties together, the fact of their participation in a common design, the fact of their being associated together at that place, and being there all at that time, are facts and circumstances that may be taken into consideration to show this undertaking that was entered into by them. It is not necessary to show it was entered into by so many formal words. It may be tacitly entered into. If a man, with

the understanding that another purposes to rob a third, joins him, goes to the place where the attempted robbery is made, and is there for the purpose of aiding him, he agrees to it just as much as though he had entered into an obligation in writing to assist him. It is an agreement in the law. That is the way you are to find it, by the relation that apparently the parties bear to each other, by their being there at the place, by their participating in the common enterprise, by their attempt to participate in the common enterprise. All these things are to be taken into consideration by you for that purpose. Now, it becomes necessary for the court to remind you of what figure these other crimes that have been proven cut in the case. This crime of the robbery of Rigsby may be taken into consideration by you in passing upon the question of the identity of the defendants. It is a competent fact for that purpose. You will remember that the evidence shows that goods were found upon the person of one of these parties who was present at this ferry when the killing of Dansby took place, that were sworn to by Rigsby as having been taken by the three parties, the man Davis, or Myers, and these two defendants, from his store. That would be evidence that might be taken into consideration with the statements of these colored witnesses, who were present at the time, and undertook to point out and identify these defendants. That may be taken into consideration for that purpose. If you believe in the theory that there was an attempt made to arrest upon the part of these parties, and that the attempt was not made by these defendants together with Davis to commit a robbery upon them, then the fact that the robbery of Rigsby had transpired, and the robbery of Taylor and these other robberies that have been proven before you, may be taken into consideration to show that crimes had been committed that would give the citizen the right to make an arrest, provided there was reasonable ground to believe, in your judgment, at the time, that the parties they were seeking to arrest were the ones that had committed those crimes. They may be taken into consideration for that purpose. You are not to consider these other crimes as make-weight against the defendants alone; that is to say, you are not to convict the defendants because of the commission of these other crimes. They were admitted for the specific purposes that I have named. They are not to influence your minds so as to induce you to more readily convict them than you would convict them if the crimes had not been proven against them. That is the figure they cut. That is the reason they were admitted as testimony before you.

Now, gentlemen, I have given you the principles of law defining this crime of murder. I have given you the law telling you in what cases all who are participants in the commission of some other crime would be held responsible for a murder growing out of that crime. If it is the crime of robbery that was entered upon, and they were all participants according to the law I have given to you making parties participants in that crime, in the attempt to consummate it, and while that attempt was being made, or the purpose was being executed, Dansby was killed, why the *pistol* was held in the hands of all, and the bullet fired from that

pistol or gun (whichever it may be) was the bullet of all, and they are all equally responsible in a case of that kind. You are to learn from this evidence what the truth of the case is. You are the judges of the credibility of the witnesses. You have positive eye-witnesses to this occurrence, persons who were present at the time it transpired,—at the time Dansby was shot. You take the testimony of these witnesses; you see whether it is reasonable, whether it is probable in its own light and in the light of the other evidence; and, as the facts were called out upon examination of the witnesses by defendants' counsel, it is perfectly proper and right when that is the case for you to take into consideration the statements made by these witnesses at or about the time of this occurrence, either in contradiction of what they testified to upon the stand or in corroboration of what they stated as witnesses, if they made the same statements upon the stand as made by them after the occurrence as to why or how this thing transpired, why these always are proper, having been called out in that way, to be taken into consideration by you as corroborative facts of what they said upon the stand. If the converse is true, and they made statements that were contradictory in substantial parts as to what the purpose of the parties was, and what they were doing at the time Dansby was killed, why you have a right to take that into consideration as contradicting them. If you are satisfied from the whole of this testimony beyond a reasonable doubt of the guilt of these defendants of the crime of murder, your duty is to convict; and, if so, you will convict them. You will say that "We, the jury, find the defendants guilty of murder as charged in the first count of the indictment." If you are not so satisfied, that is, satisfied beyond a reasonable doubt, your duty is to acquit them. And you must be satisfied beyond a reasonable doubt as to all of them before you convict them. If you are not satisfied as to all, then your duty would be to acquit the one of whose guilt you are not so satisfied.

Now a little further as to this rule that says you must weigh the credibility of the evidence. You must pass upon the amount of credit you will attach to every fact. You must do that before you can say whether the facts are sufficient to prove a proposition is established as asserted. That requires you to look at the testimony of each and every witness in its own light, and in the light of the other facts. You consider the relation that the witnesses bear to the case, and the interest they have in the result of the case. If they are to be affected seriously by the result of the case, by the verdict, as is Stanley in this case, why then, in passing upon Stanley's evidence, you are to consider that relation that he bears to the case. The highest interest and greatest interest a man has in this life is the interest he has in his own life. He will make a greater sacrifice to preserve that than he will any other right that belongs to him. That is human nature, applicable to all of us. When you are passing upon the testimony of a witness so situated as that his life is being weighed in the balance, if you would do justice, you must pass upon his statement in the light of the attitude he bears; in the light of the interest he has to make state-

ments of a certain character in the case; in the light of the motive that may prompt him or influence him to make statements that would control you or influence your minds in his favor. Now, you weigh his evidence in that way, and you weigh it again in the light of the other evidence in the case. If the other evidence contradicts him, why it weakens his evidence to the extent that you attach credit to the contradicting facts. If it corroborate what he says, why it is strengthened as you may attach credit to the corroborating facts. You will understand that under the law you are not to draw any inference against the other defendant, Boyd, because he did not go upon the stand. The law says that you shall not draw any inference against him for that reason. You have a right to draw an inference against a man if the proposition is reasonably established against him, or a presumption is created by other facts. If he has the means reasonably at hand outside of his own testimony of refuting that presumption and overthrowing it, and he does not do it, that creates a presumption against him, but he may go upon the stand or not, as he pleases. If he does not choose to go upon the stand, you cannot draw any inference against him because of that. What inferences you may draw against him must come to your minds from the other testimony in the case, and not from his failure to go upon the stand. Now, gentlemen, you will take all this evidence, you will take these rules of law I have given you, and if, when you have considered the evidence, and found what you believe to be the truth of the case, and when you make the application of the principles of law to that truth and that result is produced by that action on your part is a result that fastens upon your minds a well-grounded belief that there is guilt, and guilt of murder here as charged, your duty would be a convict, because in such a case as that you as reasonable men outside of the jury-box, as reasonable and just and impartial citizens, looking into the truth or falsity of a charge preferred against another citizen, when the proof carried your minds that far, would believe the charge, and you would act upon that belief. That is what is said by the law to establish the case to such an extent as to satisfy the minds of reasonable men so that they are convinced beyond a reasonable doubt. That is what is meant by proving a case beyond a reasonable doubt. It does not mean to prove it beyond any doubt, that it must be demonstrated absolutely, so that there is so cavil or conjecture or surmise or no possible doubt that can be arrayed against the conclusion. There is no conclusion that a man ever arrives at that there is not some sort of doubt that may be arrayed against it. But reasonable men pay no attention to that kind of a doubt. They are not influenced by such doubts. They must be such doubts as that reasonable men permit their minds to be influenced by them. So, if the case is proven so that it can be recognized and known by you as being established to that degree of moral certainty that you would be satisfied of the truth of it as citizens, if it is proven so that you can say that it is established beyond a real substantial doubt, your duty is to convict. If not, if there is a real substantial doubt of guilt in the case, your duty is to regard that doubt, and act upon it, and acquit upon it. That

means a real, substantial doubt of guilt, flowing naturally and reasonably to your minds from the evidence in this case, viewed in the light of the law that may be applicable to the truth of the case, and leaving your minds in that condition that you are not able to say you have an abiding conviction to a moral certainty of the truth of the charge. If your minds are in that condition, then there is no guilt established. If they are carried beyond that by the proof in this case, and by the law applicable to the truth of it, then they are in the field of conviction and belief; then the case is established.

I submit the case to you. It is one of great magnitude, great importance. I ask you to do that equal and exact justice that you are commanded by the law of your country, by the mandate of that law, by the oath you have assumed. I feel satisfied in submitting it that you will do that equal and exact justice that ought to be done by honest and impartial citizens, sitting in the jury-box. Gentlemen, you have the case.

UNITED STATES *v.* LOGAN *et al.*

(*Circuit Court, N. D. Texas.* March Term, 1891.)

1. CONSPIRACY—TO DEPRIVE OF RIGHTS HELD UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES.
   When a citizen of the United States is committed to the custody of the United States marshal or to a state jail by process issuing from one of the courts of the United States, to be held, in default of bail, to await his trial, on a criminal charge, within the exclusive jurisdiction of the national courts, such citizen has a right, under the constitution and laws of the United States, to a speedy and public trial by an impartial jury, and, until tried or discharged by due process of law, has a right under said constitution and laws to be treated with humanity, and to be protected against all unlawful violence, while he is deprived of the ordinary means of defending and protecting himself.

2. MURDER—COMMITTED IN THE PROSECUTION OF SUCH CONSPIRACY—JURISDICTION.
   Persons who conspire to deprive citizens of such rights are offenders under Rev. St. U. S. § 5508, and if in the commission of such offense murder is committed by them, are liable to be tried and punished in the United States courts for such murder under Rev. St. U. S. § 5509.

3. CONSPIRACY—ACTS AND DECLARATIONS OF CO-CONSPIRATOR.
   Each co-conspirator is liable for the acts and bound by the declarations of his co-conspirators, done or said during the continuance of the conspiracy, touching its object and conduct; and it is immaterial at what time he joined the conspiracy, or whether he was actually present when the particular acts were committed.

4. SAME—EVIDENCE—ACCOMPLICE.
   A conviction for conspiracy cannot be had on the uncorroborated testimony of a co-conspirator, nor can co-conspirators corroborate each other.

5. SAME.
   The fact that members of a conspiracy to offer violence to prisoners under arrest are in charge of them as deputy-marshals or guard does not lessen their guilt.

6. WITNESS—CONVICTED OF INFAMOUS CRIME.
   Persons convicted and punished for an infamous offense in the state courts are competent witnesses in the United States courts, their credibility being a question for the jury.

7. REASONABLE DOUBT.
   Jurors are not at liberty to doubt as jurors if they would believe as men.